

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:01-CR-221-1H
No. 5:16-CV-204-H

MICHAEL ANTRANTRINO LEE,)
)
 Petitioner,)
)
 v.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)

ORDER

This matter is before the court on petitioner's Notice of Withdrawal of Motion to Vacate, [DE #72], filed on his behalf by counsel. [DE #123]. The government had filed a motion to dismiss. [DE #85 and #117]. Petitioner, proceeding pro se, filed a motion to substitute 28 U.S.C. § 2255 for 28 U.S.C. § 2241 due to BOP violating Federal Rules of Appellate Procedure Rule 23(a), [DE #124]; a motion to withdraw all pending motions related to Johnson, [DE #125]; and a repeated motion to withdraw all pending motions related to Johnson, [DE #126]. Petitioner has also filed the following: a motion for release on bail pending adjudication of petitioner's 28 U.S.C. § 2255 motion, [DE #94]; a motion for reconsideration pursuant to 18 U.S.C. § 3582(c), [DE #95]; a motion to ask Judge or AUSA to direct BOP to answer defendant's request

for possible completion of sentence, [DE #96, #98]; and a motion to place administrative court hold on petitioner until surgery is complete, [DE #104]. The time for further filing has expired.

Petitioner's § 2255 motion was stayed pending the resolution of United States v. Brown, 868 F.3d 297, 298 (4th Cir. 2017), reh'g en banc denied, 891 F.3d 115 (4th Cir. 2018), cert. denied, 139 S. Ct. 14 (2018). [DE #120]. Subsequent to the Supreme Court's denial of certiorari on October 15, 2018, petitioner filed a Notice of Withdrawal of Motion to Vacate. [DE #123]. In light of Brown, the stay is hereby lifted.

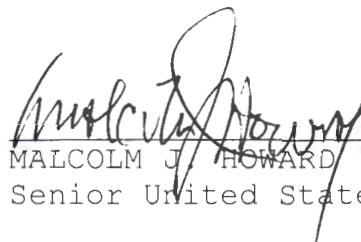
Due to the unique procedural posture of this case and out of an abundance of caution, the court construes petitioner's filing as a motion to voluntarily dismiss his claims without prejudice pursuant to Rule 41(a)(2). There being no objection, the court GRANTS petitioner's motion, [DE #123, #125, and #126], and hereby DISMISSES WITHOUT PREJUDICE petitioner's § 2255 motion, [DE #72]. All other pending, related motions are deemed MOOT. [DE #85, #94, #96, #98, #104, #117]. To the extent petitioner requests the court to reduce his sentence in an unrelated motion, [DE #95], pursuant to 18 U.S.C. § 3582(c) and Dean v. United States, 137 S. Ct. 1170, 1176-77 (2017), the court notes the Supreme Court held a sentencing court's discretion is not limited by 18 U.S.C. § 924(c), and it did not dictate a reduction in petitioner's 2002 sentence. Therefore, for lack of good cause show, petitioner's motion for

reconsideration, [DE #95], is DENIED. Finally, the court denies petitioner's motion to substitute 28 U.S.C. § 2255 for a 28 U.S.C. § 2241 motion due to BOP violating Federal Rules of Appellate Procedure Rule 23(a), [DE #124], as a § 2241 motion must be filed in the jurisdiction in which petitioner is incarcerated. The court notes petitioner is no longer in custody within the Fourth Circuit. Therefore, petitioner's motion, [DE #124], is denied.

CONCLUSION

For the foregoing reasons, petitioner's motions to withdraw his motion to vacate pursuant to 28 U.S.C. § 2255, [DE #123, #125, and #126], are GRANTED. Petitioner's § 2255 motion, [DE #72], is DISMISSED WITHOUT PREJUDICE. All other pending, related motions are deemed MOOT. [DE #85, #94, #96, #98, #104, #117]. Petitioner's motion for reconsideration, [DE #95], is DENIED. Petitioner's motion to substitute 28 U.S.C. § 2255 for a 28 U.S.C. § 2241 motion due to BOP violating Federal Rules of Appellate Procedure Rule 23(a), [DE #124], is DENIED. The clerk is directed to close this case.

This 7th day of January 2019.


MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
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